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Attorneys for Plaintiff
BNSF Railway Company (formerly
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY)

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY
COMPANY, a Corporation,

Plaintiff,

V.

PENNY NEWMAN GRAIN
COMPANY; and Roes 1-5, inclusive,

Defendants

) Case No. 1:05-cv-00105 AWI SMS
)
)
)
**) STIPULATION TO PERMIT FILING
OF A SECOND AMENDED
COMPLAINT BY BNSF WAIVER OF
SERVICE AND ORDER THEREON**

TRIAL DATE: NONE

TO ALL PARTIES AND THEIR COUNSEL OF RECORD AND TO THE
HONORABLE JUDGE ANTHONY W. ISSHII,

26 Plaintiff BNSF RAILWAY COMPANY ([“BNSF”], the former name of which
27 was THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY at
28 the time this Complaint in this matter was drafted) and defendant PENNY NEWMAN

1 GRAIN COMPANY (PENNY NEWMAN) hereby stipulate and agree to the following
2 for the sake of economy and for the convenience of the court:

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4 WHEREAS the parties are actively engaged in settlement discussions in this
5 matter;

6 WHEREAS BNSF has sued PENNY NEWMAN in connection with charges
7 relating to rail car movements to and from PENNY NEWMAN's Fresno, California and
8 Guernsey, California facilities and BNSF contends that charges have continued to accrue
9 relating to services performed and demurrage accrued in connection with such
10 movements which BNSF wishes to include in the pleadings to bring them up to date;

11 WHEREAS BNSF wishes to avoid the expense of utilizing the traditional mens of
12 service of the summons and complaint by personal service on an officer or agent of
13 PENNY NEWMAN;

14 WHEREAS the parties wish to avoid any expense to the Court by motion practice
15 on leave to amend the complaint;

16 WHEREAS the parties anticipate this matter will settle in the very near future;

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18 NOW THEREFORE the parties hereto do stipulate and agree to the following:

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20 1. BNSF may file the Second Amended Complaint against PENNY
21 NEWMAN

22 (which is lodged concurrently herewith);

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24 2. BNSF may effectuate binding service of process of the Second Amended
25 Complaint herein on PENNY NEWMAN by mailing a copy of the Second Amended
26 Complaint on its counsel, Mr. Kenneth Baldwin at Law Offices of McCormick, Barstow,
27 Sheppard, Wayte & Carruth, LLP at 5 River Park Place East, Fresno, California 93720;

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1 3. PENNY NEWMAN shall have twenty three days from the date of mail
2 service of the Second Amended Complaint within which to answer or otherwise
3 respond to the Complaint herein while the parties engage in informal settlement
4 negotiations.

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6 4. The Court will set a Scheduling Conference in this matter after Penny
7 Newman has filed its response to the Second Amended Complaint.

8 IT IS SO STIPULATED.

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10 Dated: April 21, 2005

LAW OFFICES OF LESLIE G.
MCMURRAY

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/s/ Leslie McMurray

BY:

LESLIE G. MCMURRAY
Attorneys for Plaintiff BNSF RAILWAY
COMPANY (FORMERLY THE
BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY)

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Dated: April 21, 2005

MCCORMICK BARSTOW, SHEPPARD,
WAYTE & CARRUTH, LLP

/s/ Kenneth Baldwin

BY:

KENNETH BALDWIN
Attorneys for Defendant PENNY
NEWMAN GRAIN COMPANY

ORDER ON STIPULATION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 The Court, having reviewed the above stipulation of the parties and good cause
4 appearing therefore, hereby orders as follows:

- 5 1. BNSF may file the Second Amended Complaint lodged concurrently with the
 - 6 Stipulation against PENNY NEWMAN;
 - 7 2. BNSF may effectuate binding service of process of the Second Amended
 - 8 Complaint on PENNY NEWMAN by mailing a copy of the Second Amended Complaint
 - 9 on its counsel, Mr. Kenneth Baldwin at Law Offices of McCormick, Barstow, Sheppard,
 - 10 Wayte & Carruth, LLP at 5 River Park Place East, Fresno, California 93720;
 - 11 3. PENNY NEWMAN shall have twenty three days from the date of mail service
 - 12 of the Second Amended Complaint within which to answer or otherwise
 - 13 respond to the Complaint herein.
 - 14 4. The Court will set a Scheduling Conference in this matter after Penny
 - 15 Newman has filed its response to the Second Amended Complaint.

IT IS SO ORDERED.

Dated: April 25, 2005
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/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE